

All vegetation above the high-tide line to be preserved, promoted, and restored/re-created should consist only of the two habitat types native to the historical Ballona Wetlands area: 1) coastal scrub (a low-profile, summer-deciduous community dominated by such species as California sagebrush *Artemisia californica*, California sunflower *Encelia californica*, and coast goldenbush *Isocoma menziesii*), 2) willow scrub (a low thicket-like community dominated by narrow-leaved willow *Salix exigua*), and riparian canopy (Native and non-invasive, non-native trees appropriate for supporting roosting and nesting colonial waterbirds). A professional firm, or firms, specializing in southern California native plant restoration, installation, and maintenance is recommended to prepare the site for planting, and to achieve successful establishment of these native communities.

Unnecessary and derelict concrete structures currently on the site (such as old wildlife watering troughs) and redundant fencing should be removed from the upper slopes where feasible.

The County will support relocation of telephone lines that currently cut across the northern part of Oxford Basin if such re-routing along Washington Boulevard or Admiralty Way is proposed by the entity operating these lines, as they could conflict with future wildlife use of the site (and lead to collisions with flying birds, especially on foggy days).

Tree Management Policies (No. 23 and 34)

The following policies provide standards for County personnel, contractors, lessees, and anyone else potentially involved in pruning or removing trees in Marina del Rey. Note that, for most species, the "breeding season" generally extends from February through August. For species like the Great Blue Heron, however, breeding activities may start as early as December, and both Mourning Doves (*Zenaida macroura*) and hummingbirds may nest essentially year-round. Since removal of the active nest of virtually any native species represents a violation of State and federal law, all tree pruning or removal should be done in consultation with a trained biologist familiar with the relevant statutes and with these policies. Furthermore, the "breeding season" for bats is considered to extend from March 1 to September 15. A coastal development permit is required for any nesting tree removal associated with new development, re-development, or renovation. The only exception would be if the nesting tree removal associated with new development, re-development, or renovation is necessary for a health and safety emergency.

POLICY NO. 23 - MARINA DEL REY TREE PRUNING AND TREE REMOVAL POLICY

1.0 INTRODUCTION/PURPOSE

The purpose of this Policy and Policy No. 34 is:

- 1.1 To establish guidelines within Marina del Rey for the pruning and removal of trees in accordance with the federal Migratory Bird Treaty Act and California Fish and Game Code, and to ensure the long-term protection of breeding, roosting and nesting habitats of federal and state-listed species, California Species of Special Concern, and colonial waterbirds.
- 1.2 To provide County staff with guidelines and procedures for tree pruning and/or tree removal within Marina del Rey in consideration of the colonial waterbird species, as the term is defined in Section 4.3 of this policy, and raptor species, as the term is defined in Section 4.12 of this policy, and the desire to reduce or eliminate impacts to their nesting habitats.

2.0 **POLICY**

This policy will be implemented by the County of Los Angeles Department of Beaches and Harbors for the purpose of overseeing the tree pruning and/or tree removal activities of Marina del Rey properties so as to minimize or avoid impacts to the nesting habitats established by colonial waterbird and raptor species. For clarification purposes, palms are included when any section in this policy refers to trees. Section 5.3 of this Policy contains procedures for addressing immediate and imminent health and safety and emergency issues.

The County will enforce and implement this policy in compliance with the Migratory Bird Treaty Act which prohibits the taking, killing or possession of any migratory bird and, therefore, disturbance of any nesting bird is illegal.

An earlier version of this policy has been carried out by the Department of Beaches & Harbors (Department) since 2003 to manage tree pruning and tree removal activities on County-operated Marina del Rey properties. This revised policy, taken together with the annual surveys of breeding and nesting federal and state listed species, California Species of Special Concern and colonial waterbirds, as outlined in the 2010 *Marina del Rey Conservation & Management Plan*, will continue to provide the basis for management and oversight to County-operated properties. The surveys shall be conducted by a qualified biologist(s) in Marina del Rey in order to establish the long-term status and trends of these species, especially colonial waterbirds. The survey reports shall include photos of active and inactive nests.

Following completion of the County's nesting colonial waterbird surveys each year, the Department will identify all County-operated properties on which no nests of colonial waterbird or raptor species were found. Tree pruning activities

may commence on the identified properties within a reasonable period of time (i.e., outside of the breeding/nesting season).

The Department's qualified biologist (as the term is defined in Section 4.11 of this Policy) may use the annual nesting colonial waterbird surveys as the basis for part or all of the initial survey, where required, prior to the commencement of annual tree pruning on County-operated properties.

Considering Marina del Rey's urban character, its abundance of trees, and the propensity of local herons and egrets to nest in a variety of arboreal settings, the potential will always exist for land-use conflicts to develop in the marina environment. Such conflicts could include health risks (such as co-location with restaurant uses or risks to humans from airborne pathogens), safety risks (such as an unbalanced tree), and substantial interference with public amenities such as public parking or public walkways. In those limited circumstances, appropriate management responses could include pruning of trees during the non-breeding season to make them unsuitable as nesting substrates. Any such "directed pruning" should be done during the non-breeding season, which allows the affected birds an opportunity to select among ample nesting trees elsewhere in the nearby area. The annual nesting colonial waterbird surveys to be conducted by the County or County contractors are intended to include documentation of any apparent bird-human conflicts and make recommendations for how the conflicts might be resolved in ways that best respond to the Marina del Rey Conservation & Management Plan and normal public health, safety, and public-access consideration.

Department policy requires that all tree pruning and removal conducted in Marina del Rey adhere to the procedures outlined in this policy and in policy no. 34. Tree pruning or removal of nesting trees is prohibited during the breeding/nesting season except in the case of a health and/or safety emergency as defined below. In circumstances where tree pruning and removal is not completed during the non-breeding/non-nesting season, tree pruning or removal may proceed as prescribed in section 5.2 below on trees that annual surveys have shown are not active nesting trees and that have not been active nesting trees in the last five years.

All tree pruning and removal shall be conducted in strict compliance with this policy and Policy No. 34. However, if the County determines that pruning impacts a nest, or removal of a nesting tree is necessary for a reason other than a health and safety issue, a coastal development permit is required.

3.0 **APPLICABLE STATUTES**

3.1 California Fish and Game Code § 3503

"It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto."

3.2 California Fish and Game Code § 3513

"It is unlawful to take or possess any migratory non-game bird as designated in the Migratory Bird Treaty Act or any part of such migratory non-game bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Treaty Act."

3.3 Migratory Bird Treaty Act - U.S. Code, Title 16, § 703

"Unless and except as permitted by regulations made as hereinafter provided, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess . . . any migratory bird, any part, nest, or egg of any such bird. . . included in the terms of the conventions between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916, the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936, the United States and the Government of Japan for the protection of migratory birds and birds in danger of extinction, and their environment concluded March 4, 1972[,] and the convention between the United States and the Union of Soviet Socialist Republics for the conservation of migratory birds and their environments concluded November 19, 1976."

3.4 Special Purpose Permits - U.S Code of Federal Regulations, Title 50, § 21.27

"Special purpose permit is required before any person may lawfully take, salvage, otherwise acquire, transport, or possess migratory birds, their parts, nests, or eggs for any purpose not covered by the standard form permits of this part." Permit applications are submitted to the U.S. Fish and Wildlife Service's Regional Office.

4.0 **DEFINITIONS**

4.1 Active Nest - A nest that is under construction or that contains eggs or young.

4.2 Breeding/Nesting Season - January 1 through September 30.

4.3 Colonial Waterbirds - Great Blue Heron (*Ardea herodias*), Black-crowned Night-Heron (*Nycticorax nycticorax*), Double-crested Cormorant (*Phalacrocorax auritus*), Great Egret (*Ardea alba*), Snowy Egret (*Egretta thula*).

- 4.4 Department - Los Angeles County Department of Beaches & Harbors.
- 4.5 Health Issue/Safety Issue - A natural occurrence, disaster, or disease jeopardizing public health or safety and that causes immediate or imminent danger to any person or property. A health and safety danger exists if a tree or branch is dead, diseased, dying, or injured and said tree or branch is in immediate or imminent danger of collapse or breaking away. Health risks include proximity of airborne pathogens or animal waste to human habitation or dining facilities.
- 4.6 Nesting Tree - A Tree as defined in 4.13 below containing Occupied or Unoccupied nests that have been used in the past five years or supporting evidence of courtship or nest building.
- 4.7 Non-breeding/Non-nesting Season - October 1 through December 31.
- 4.8 Non-nesting Tree - A Tree, as defined in 4.13 below, containing no nests or containing Unoccupied nests that have not been used in five or more years.
- 4.9 Occupied Nest - A nest that contains eggs or young.
- 4.10 Pruning - The horticultural practice of cutting away an unwanted, unnecessary, or unhealthy plant part, used most often on trees, shrubs, hedges, and woody vines. Pruning includes, but is not limited to, 1) eliminating branches that rub each other, 2) removing limbs that interfere with wires, building facades, gutters, roofs, chimneys, or windows, or that obstruct streets or sidewalks, 3) removing dead or weak limbs that pose a hazard or may lead to decay, 4) removing diseased or insect-infested limbs, 5) creating better structure to lessen wind resistance and reduce the potential for storm damage, 6) training young trees, 7) removing limbs damaged by adverse weather conditions, 8) removing branches, or thinning, to increase light penetration, and/or 9) improving the shape or silhouette of the tree.
- 4.11 Qualified Biologist - Graduation from an accredited college with a bachelor or higher degree in biological science or ornithology and at least two (2) years experience conducting nesting bird surveys or an arborist with a bachelor or higher degree in arboriculture and having at least two (2) years experience conducting nesting bird surveys.
- 4.12 Raptor - Order Falconiformes, which includes eagles, hawks, falcons, and ospreys.

- 4.13 Tree - A palm or a plant having a permanently woody main stem or trunk, ordinarily growing to a height over eight (8) feet and usually developing branches at some distance from the ground.

5.0 **PROCEDURE**

Non-nesting trees on County-operated properties that are identified in the annual nesting colonial waterbird survey as having no active nests and no history of nesting within five years will be exempt from sections 5.1.1 through 5.1.11 of this Policy.

County-operated properties identified in the County's annual nesting colonial waterbird survey as having active nests will be required to follow the procedures contained in sections 5.1.1 through 5.1.11 of this policy.

Regardless of the results of the annual nesting colonial waterbird survey, the Department's plans to conduct tree pruning or tree removal activities at any time must follow the procedures prescribed by this policy.

- 5.1 Tree Pruning and Removal Restrictions During the Non-Breeding/Non-Nesting Season
- 5.1.1 Tree pruning on County-operated properties shall be performed during the non-breeding/non-nesting season on all nesting trees and to the greatest extent possible on non-nesting trees.
- 5.1.2 During the non-breeding season, at least fourteen (14) days prior to tree pruning, a qualified biologist shall coordinate with the County's landscape contractor and survey the trees to be pruned or removed to detect nests by conducting a ground level visual inspection of the trees scheduled for pruning. The tree survey report shall include a map with the respective status of all the trees scheduled for pruning or removal and a plot plan showing any trees suspected to have active or unoccupied nests. Copies of the survey and plot plan shall be filed by the Department for public agency review.
- 5.1.3 Seven (7) days prior to the commencement of tree pruning activities, the qualified biologist shall walk the entire area proposed for pruning with a pair of binoculars and/or spotting scope to determine whether the juveniles have fledged the nests and to evaluate whether any adults appear to be starting a new clutch (preparing to mate and lay eggs).
- 5.1.4 Upon complying with procedures described in subsections 5.1.1 through 5.1.3, the Department will notify the United States Fish and Wildlife Service (USFWS), the California Department of Fish and Game (CDFG) and the Executive Director

of the California Coastal Commission (CCC) by submitting by e-mail within two (2) business days the qualified biologist's survey report and a copy of the tree pruning or removal plan prepared by the arborist or landscape contractor which shall incorporate the following:

- a. A description of how work will occur.
- b. Use of non-mechanized hand tools to the maximum extent feasible.
- c. Tree pruning and/or removal limits established in the field with flagging and stakes or construction fencing.
- d. Assurance that tree pruning will be the minimum necessary to accomplish the respective objectives.

5.1.5 Nesting or non-nesting tree(s) that show current evidence of courtship may not be pruned in a way that compromises the support structure of existing occupied or unoccupied nests. The amount of pruning at any one time shall be limited to preserve the suitability of the nesting tree for breeding and nesting habitat. Under limited circumstances, where a nesting tree(s) is determined to be an unmitigatable health or safety issue, the Department, in consultation with a Qualified Biologist and with notice to the appropriate agencies, may determine that pruning, so as to remove the empty nest and/or to discourage future nesting, or tree removal is appropriate.

5.1.6 Tree pruning or removal may not proceed if an active nest is found and/or evidence of courtship or nesting behavior is observed, even if it is occurring during the non-breeding season. Tree pruning or removal shall not occur any closer than 300 feet from these trees (500 feet in the case of an active Raptor nest). In the event that any birds exhibiting breeding and nesting behavior continue to occupy the trees during the non-breeding/non-nesting season, pruning or removal shall not take place until a qualified biologist has re-assessed the site, determined that breeding and nesting has ceased and given approval to proceed within 300 feet of any occupied tree (500 feet for raptor species). Following the compliance with procedures described in subsections 5.1.1 through 5.1.5, the Department will notify the USFWS, the CDFG and the Executive Director of the CCC by e-mail within two (2) business days of receiving qualified biologist's determination.

5.1.7 Unoccupied nests that have not been used in five or more years may be removed (including those attached to dead palm fronds) only after the qualified biologist documents and photographs the occurrence. Copies of photographs and reports shall be filed by the Department for public agency review.

5.1.8 In the event that colonial waterbirds are observed to return during the non-breeding season to a nest previously thought to be unoccupied while pruning operations are occurring, activities shall stop until the qualified biologist re-

assesses the site. The Biologist may recommend proceeding conditionally, consistent with Section 5.2 of this Policy.

- 5.1.9 Special emphasis shall be placed on public safety during pruning operations, particularly when the operation is adjacent to bike paths, parking stalls, sidewalks, driveways, or the promenade.
- 5.1.10 All trimmings must be removed from the site at the end of the business day and disposed of at an appropriate location.
- 5.1.11 Removal of any tree shall require mitigation at a 1:1 ratio. Replacement trees shall consist of native or non-native, non-invasive tree species. The Department shall develop a tree replacement planting plan for all trees to be removed, which plan should include the location, tree type, tree size, and planting specifications and a monitoring program with specific performance standards. A tree replacement monitoring report shall be prepared and then updated annually for five years.
- 5.2 Tree Trimming and Removal Restrictions During the Breeding/Nesting Season or Near Active or Occupied Nests
 - 5.2.1 This section addresses non-nesting tree pruning or removal during the breeding/nesting season. Nesting trees must be trimmed during the non-breeding and non-nesting season per section 5.1 above. This section specifically applies to those circumstances where the completion of tree pruning activities started during the non-breeding/non-nesting season extends into the breeding/nesting season. If tree pruning must occur during the breeding/nesting season, the Department will conduct a monitoring program to begin 14 days prior to commencing activities that have a potential to disturb any nesting tree. During the 14-day monitoring period, the Department shall arrange to have its qualified biologist conduct weekly surveys to detect and record any protected birds in the area of operation and to identify any active nests within 300 feet (500 feet for raptors) of the trees proposed to be pruned.
 - 5.2.2 If during the breeding/nesting season it cannot be determined from the ground whether a nest is active, the qualified biologist will make a close-range observation of each nest to determine whether the nest is an active nest; that is, whether there are eggs in the nest and/or whether nest maintenance has taken place. Photographs of nests will be taken from above, as near to vertical as possible. Nests should be accessed by using a cherry picker or a boom truck.
 - 5.2.3 After inspecting all trees for active nests in the specific area scheduled for pruning activities under Section 5.2.1, the qualified biologist shall identify those trees

containing active nests with caution tape, flags, ribbons or stakes. The Department shall instruct the tree pruning contractor to avoid disturbing all marked trees during scheduled pruning activities.

- 5.2.4 The tree pruning contractor should begin pruning operations within three to four (3-4) days of the qualified biologist's survey.
- 5.2.5 Pruning or removal activities within 300 feet of a tree with an active nest (500 feet in the case of an active raptor nest) must be performed with hand tools. If pruning activities cannot be accomplished with hand tools, the servicing of these trees must be postponed until the nest is vacated, juveniles have fledged, and there is no evidence of a second attempt at nesting.
- 5.2.6 In the event the tree pruning contractor discovers an active nest (eggs, nest construction, other evidence of breeding) not previously identified by the qualified biologist, the contractor shall immediately cease all pruning activities in that area of operation, and shall immediately notify the Department. Thereafter, the qualified biologist must perform a re-inspection of the tree containing an active nest following the procedures described in this policy to continue the tree pruning activities.
- 5.2.7 All trimmings must be removed from the site at the end of the business day and disposed of at an appropriate location.
- 5.2.8 Removal of any tree shall require mitigation at a 1:1 ratio. Replacement trees shall consist of native or non-native, non-invasive tree species. The Department shall develop a tree replacement planting plan for all trees to be removed, which plan should include the location, tree type, tree size, and planting specifications and a monitoring program with specific performance standards. A tree replacement monitoring report shall be prepared and then updated annually for five years.

5.3 Health and Safety Issues & Emergencies

- 5.3.1 The Department, in consultation with a certified arborist and qualified biologist or public health official, as necessary, shall determine if an immediate or imminent health and safety issue exists as described in the definitions above. The Department shall be proactive in identifying any tree related health and safety issue as early as possible during the non-breeding/non-nesting season in order to avoid habitat disturbances during the breeding/nesting season.
- 5.3.2 Nesting or non-nesting trees posing an immediate or imminent health or safety issue should be pruned/removed immediately regardless of the presence of nest(s).

- 5.3.3 If the location or change in the condition of a nesting tree located on property operated and maintained by the County presents an immediate or imminent health and safety issue as described in the definitions above, the Department shall submit a special permit application, as soon as possible, to the USFWS (see 3.4 above, Special Purpose Permits - U.S Code of Federal Regulations, Title 50, § 21.27) and notify CDFG, and the Executive Director of the CCC, as soon as possible, while proceeding, as necessary, with nesting tree removal or other remedies. When possible the Department shall submit a special permit application and notify above agencies prior to tree removal or other remedies.
- 5.3.4 The Department shall photograph the health and/or safety issue site conditions before and after the remedy(s) and document the impacts to the nesting tree (i.e. number of nests, eggs, and/or chicks lost) and adjacent biological resources. The photographs and report shall be available for public agency inspection.
- 5.3.5 Steps shall be taken to ensure that tree pruning or removal will be the minimum necessary, as determined by an arborist or qualified biologist, to address the health and safety issue while avoiding or minimizing impacts to nesting birds and their habitat. Steps taken shall include the use of non-mechanized, hand tools whenever the emergency occurs within 300 feet of a nesting tree.
- 5.3.6 All trimmings must be removed from the site at the end of the business day and disposed of at an appropriate location.
- 5.3.7 Removal of any tree shall require mitigation at a 1:1 ratio. Replacement trees shall consist of native or non-native, non-invasive tree species. The Department shall develop a tree replacement planting plan for all trees to be removed, which plan should include the location, tree type, tree size, and planting specifications and a monitoring program with specific performance standards. A tree replacement monitoring report shall be prepared and then updated annually for five years.

POLICY NO. 34 - MARINA DEL REY LEASEHOLD TREE PRUNING AND TREE REMOVAL POLICY

1.0 INTRODUCTION/PURPOSE

The purpose of this Policy is:

- 1.1 To establish guidelines within Marina del Rey for the pruning and removal of trees in accordance with the federal Migratory Bird Treaty Act and California Fish and Game Code, and to ensure the long-term protection of breeding, roosting

and nesting habitats of federal and state-listed species, California Species of Special Concern, and colonial waterbirds.

- 1.2 To provide Lessees with guidelines and procedures for tree pruning and/or tree removal on leaseholds located in Marina del Rey in consideration of the colonial waterbird species, as the term is defined in Section 4.3 of this policy, and raptor species, as the term is defined in Section 4.12 of this policy, and the desire to reduce or eliminate impacts to their nesting habitats.

2.0 **POLICY**

This policy will be implemented by the County of Los Angeles Department of Beaches and Harbors (Department) for the purpose of overseeing the tree pruning and/or tree removal activities of Marina del Rey Lessees so as to minimize or avoid impacts to the nesting habitats established by colonial waterbird and raptor species on leasehold property.

The Department will enforce and implement this policy in compliance with the Migratory Bird Treaty Act which prohibits the taking, killing or possession of any migratory bird and, therefore, disturbance of any nesting bird is illegal. For clarification purposes, palms are included in any reference herein to trees.

Lessees, in following the procedures set forth below, will carry out their tree pruning and/or removal activities in cooperation with the Department and only with the explicit authorization of the Department prior to starting such work. Section 5.3 of this policy contains procedures for Lessees or their authorized representatives to follow when addressing immediate or imminent health and safety and emergency situations.

This policy is an outgrowth of Internal Policy No. 23 that has been carried out by the Department since 2003 to manage tree pruning and tree removal activities on County-operated Marina del Rey properties. The Department's Internal Policy No. 23, taken together with the annual surveys of breeding and nesting federal and state listed species, California Species of Special Concern and colonial waterbirds, as outlined in the 2010 Marina del Rey Conservation & Management Plan, will provide the basis for extending management and oversight to Lessee-operated parcels. The surveys shall be conducted by a qualified biologist(s) in Marina del Rey in order to establish the long-term status and trends of these species, especially colonial waterbirds. The survey reports shall include photos of active and inactive nests.

Following completion of the Department's nesting colonial waterbird surveys each year, the Department will identify all leaseholds on which no nests of colonial waterbird or raptor species were found, and Lessees will be notified in

writing that tree pruning activities may commence on the identified leaseholds during the non-breeding/non-nesting season.

Lessees are encouraged to utilize the Department's annual nesting colonial waterbird surveys as the basis for part or all of the surveys prepared by Lessee's qualified biologist (as the term is defined in Section 4.11 of this policy), where required by this policy, prior to the commencement of annual tree pruning on Marina del Rey leaseholds.

Lessee is required, under the "Rules and Regulations" provision of Marina del Rey leases, to ensure that all tree pruning and/or tree removal conducted on leaseholds located in Marina del Rey adheres to the guidelines and procedures outlined in this policy statement. Similarly, the policies and procedures contained herein apply to the ongoing maintenance of existing developments and may not be used to substitute for the project and landscaping approvals required by the County of Los Angeles for new development, re-development, or renovations.

Considering Marina del Rey's urban character, its abundance of trees, and the propensity of local herons and egrets to nest in a variety of arboreal settings, the potential will always exist for land-use conflicts to develop in the marina environment. Such conflicts could include health risks (such as co-location with restaurant uses or risks to humans from airborne pathogens), safety risks (such as an unbalanced tree), and substantial interference with public amenities such as public parking or public walkways. In those limited circumstances, appropriate management responses could include pruning of trees during the non-breeding/non-nesting season to make them unsuitable as nesting substrates. Any such "directed pruning" should be done during the non-breeding/non-nesting season which allows the affected birds an opportunity to select among ample nesting trees elsewhere in the nearby area. The annual nesting colonial waterbird surveys to be conducted by the Department or Department contractors are intended to include documentation of any apparent bird-human conflicts and make recommendations for how the conflicts might be resolved in ways that best respond to the Marina del Rey Conservation & Management Plan and normal public health, safety, and public-access consideration.

Department policy requires that all tree pruning and removal conducted in Marina del Rey adhere to the procedures outlined in this document (Policy 34). Tree pruning or removal is prohibited during the breeding/nesting season except to complete tree pruning activities started during the non-breeding/non-nesting season as prescribed in section 5.2 below on trees that annual surveys have shown are not active nesting trees and that have not been active nesting trees in the last five years or in the case of a health and safety emergency.

All tree pruning and removal shall be conducted in strict compliance with this policy. If a Lessee determines that pruning impacts a nest, or removal of a nesting tree is necessary for a reason other than a health and safety issue, a coastal development permit is required.

3.0 **APPLICABLE STATUTES**

3.1 California Fish and Game Code § 3503

"It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto."

3.2 California Fish and Game Code § 3513

"It is unlawful to take or possess any migratory non-game bird as designated in the Migratory Bird Treaty Act or any part of such migratory non-game bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Treaty Act."

3.3 Migratory Bird Treaty Act- U.S. Code, Title 16, § 703

"Unless and except as permitted by regulations made as hereinafter provided, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess . . . any migratory bird, any part, nest, or egg of any such bird. . . included in the terms of the conventions between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916, the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936, the United States and the Government of Japan for the protection of migratory birds and birds in danger of extinction, and their environment concluded March 4, 1972[,] and the convention between the United States and the Union of Soviet Socialist Republics for the conservation of migratory birds and their environments concluded November 19, 1976."

3.4 Special Purpose Permits- U.S Code of Federal Regulations, Title 50, § 21.27

"Special purpose permit is required before any person may lawfully take, salvage, otherwise acquire, transport, or possess migratory birds, their parts, nests, or eggs for any purpose not covered by the standard form permits of this part." Permit applications are submitted to the U.S. Fish and Wildlife Service's Regional Office.

4.0 **DEFINITIONS**

- 4.1 Active Nest - A nest that is under construction or that contains eggs or young.
- 4.2 Breeding/Nesting Season - January 1 through September 30.
- 4.3 Colonial Waterbirds - Great Blue Heron (*Ardea herodias*), Black-crowned Night-Heron (*Nycticorax nycticorax*), Double-crested Cormorant (*Phalacrocorax auritus*), Great Egret (*Ardea alba*), Snowy Egret (*Egretta thula*).
- 4.4 Department - Los Angeles County Department of Beaches & Harbors.
- 4.5 Health Issue/Safety Issue - A natural occurrence, disaster, or disease jeopardizing public health or safety and that causes immediate or imminent danger to any person or property. A health and safety danger exists if a tree or branch is dead, diseased, dying or injured and said tree or branch is in immediate or imminent danger of collapse or breaking away. Health risks include proximity of airborne pathogens or animal waste to human habitation or dining facilities.
- 4.6 Nesting tree – A tree as defined in 4.13 below, containing Occupied or Unoccupied nests that have been used in the past five years or supporting evidence of courtship or nest building.
- 4.7 Non-breeding/Non-nesting Season -- October 1 through December 31.
- 4.8 Non-nesting Tree - A Tree, as defined in 4.13 below, containing no nests or containing Unoccupied nests that have not been used in five or more years.
- 4.9 Occupied Nest - A nest that contains eggs or young.
- 4.10 Pruning - The horticultural practice of cutting away an unwanted, unnecessary, or unhealthy plant part, used most often on trees, shrubs, hedges, and woody vines. Pruning includes, but is not limited to, 1) eliminating branches that rub each other, 2) removing limbs that interfere with wires, building facades, gutters, roofs, chimneys, or windows, or that obstruct streets or sidewalks, 3) removing dead or weak limbs that pose a hazard or may lead to decay, 4) removing diseased or insect-infested limbs, 5) creating better structure to lessen wind resistance and reduce the potential for storm damage, 6) training young trees, 7) removing limbs damaged by adverse weather conditions, 8) removing branches, or thinning, to increase light penetration, and/or 9) improving the shape or silhouette of the tree.
- 4.11 Qualified Biologist - Graduation from an accredited college with a bachelor or higher degree in biological science or ornithology and at least two (2) years

experience conducting nesting bird surveys or an arborist with a bachelor or higher degree in arboriculture and having at least two (2) years experience conducting nesting bird surveys.

- 4.12 Raptor - Order Falconiformes, which includes eagles, hawks, falcons, and ospreys.
- 4.13 Tree - A palm or a plant having a permanently woody main stem or trunk, ordinarily growing to a height over eight (8) feet and usually developing branches at some distance from the ground.

5.0 **PROCEDURE**

Non-nesting trees on Leasehold parcels that are identified in the Department's annual nesting colonial waterbird survey as having no active Nests nor a history of nesting within five years will be exempt from sections 5.1.1 through 5.1.11 of this policy. Lessees will be notified in writing that tree pruning activities shall be carried out during the non-breeding/non-nesting season.

Leasehold parcels that are identified in the Department's annual nesting colonial waterbird survey as having active Nests will be required to follow the procedures contained in sections 5.1.1 through 5.1.11 of this Policy.

Regardless of the results of the Department's annual nesting colonial waterbird survey, all leasehold parcels proposing to conduct tree pruning or tree removal activities at any time must follow the procedures prescribed by this policy. Written authorization from the Department must be obtained before any action is undertaken that might disturb an active nest.

- 5.1 Tree Pruning and Removal Restrictions During Non-Breeding/Non-Nesting Season
 - 5.1.1 Tree pruning and removal on all leaseholds in Marina del Rey shall be performed during the non-breeding/non-nesting season on all nesting trees and to the greatest extent possible on non-nesting trees.
 - 5.1.2 During the non-breeding season, at least fourteen (14) days prior to tree pruning, the Lessee's qualified biologist shall coordinate with the Lessee's landscape contractor and survey the trees to be pruned or removed to detect nests by conducting a ground level visual inspection of the trees scheduled for pruning. The tree survey report shall include a map showing all the trees scheduled for pruning or removal and trees suspected to have active or unoccupied nests. Copies of the survey and map shall be submitted to and filed by the Department for public agency review.

- 5.1.3 Seven (7) days prior to the commencement of tree pruning activities, the Lessee's qualified biologist shall walk the entire area proposed for pruning with a pair of binoculars and/or spotting scope to determine whether the juveniles have fledged the nests and to evaluate whether the adults appear to be starting a new clutch (preparing to mate and lay eggs).
- 5.1.4 Upon complying with procedures described in subsections 5.1.1 through 5.1.3, no less than seven (7) days prior to the planned commencement of tree pruning or removal activities, the Lessee will notify the Department in writing with a copy of the survey report, plot plan and a tree pruning or removal plan prepared by the arborist or landscape contractor which addresses the following:
- a. A description of how work will occur (e.g. mechanized equipment, hand tools, phasing, etc.).
 - b. Use of non-mechanized hand tools to the maximum extent feasible.
 - c. Tree pruning and/or removal limits established in the field with flagging and stakes or construction fencing.
 - d. Assurance that tree pruning will be the minimum necessary to accomplish the respective objectives.

Notification must include the name and credentials of Lessee's qualified biologist. Once the Department receives the tree survey report, plot plan and tree pruning or removal plan, the Department will notify the United States Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG) and the California Coastal Commission (CCC) by submitting by e-mail, within (2) two business days of receipt of Lessee's notice.

- 5.1.5 Nesting or non-nesting tree(s) that show current evidence of courtship may not be pruned in such a way that compromises the support structure of existing occupied or unoccupied nests. The amount of pruning at any one time shall be limited to preserve the suitability of the nesting tree for breeding and nesting habitat. Under limited circumstances, where a tree(s) is determined to be an health or safety issue, the Lessee, in consultation with a qualified biologist and with the prior approval of the Department, may conduct pruning so as to remove the empty nest and to discourage future nesting, or tree removal as appropriate.
- 5.1.6 Tree pruning or removal may not proceed if an active nest is found and/or evidence of courtship or nesting behavior is observed, even if it is occurring during the non-breeding/non-nesting season. Tree pruning or removal shall not occur any closer than 300 feet from these trees (500 feet in the case of an active raptor nest). In the event that any birds exhibiting breeding and nesting

behavior continue to occupy the trees during the non-breeding/non-nesting season, Lessee shall immediately notify the Department and pruning or removal shall not take place until a qualified biologist has re-assessed the site, determined that breeding and nesting has ceased and given approval to proceed within 300 feet of any occupied tree (500 feet for raptor species). Following compliance with procedures described in subsections 5.1.1 through 5.1.3, the Department will notify the USFWS, CDFG, and the Executive Director of the CCC by e-mail within two (2) business days of receiving qualified biologist's determination.

- 5.1.7 Unoccupied nests that have not been used in five or more years may be removed (including those attached to dead palm fronds) only after the Lessee's qualified biologist documents and photographs the occurrence. Copies of the qualified biologist's report and photographs shall be forwarded to the Department within three (3) business days of the removal.
- 5.1.8 In the event that colonial waterbirds are observed to return during the non-breeding/non-nesting season to a nest previously thought to be unoccupied while pruning operations are occurring, activities shall stop until the qualified biologist re-assesses the site. The qualified biologist may recommend proceeding conditionally, consistent with Section 5.2 of this Policy.
- 5.1.9 Special emphasis shall be placed on public safety during pruning operations, particularly when the operation is adjacent to bike paths, parking stalls, sidewalks, driveways or the promenade. Lessee must obtain advance written approval from the Department for the closure of any public promenade or sidewalk necessitated by the tree pruning work.
- 5.1.10 All trimmings must be removed from the site at the end of the business day and disposed of at an appropriate location.
- 5.1.11 Removal of any tree shall require mitigation at a 1:1 ratio. Replacement trees shall consist of native or non-native, non-invasive tree species. The Lessee shall develop and submit to the Department for approval a tree replacement planting plan for all trees to be removed, which should include the location, tree type, tree size, planting specifications, and a monitoring program with specific performance standards shall be prepared and then updated annually for five years.
- 5.2 Tree Trimming and Removal Restrictions During Breeding/Nesting Season or Near Active or Occupied Nests
 - 5.2.1 This section addresses non-nesting tree pruning or removal during the breeding/nesting season. Nesting trees must be trimmed during the non-

breeding/non-nesting season per section 5.1 above. This section specifically applies to those circumstances where the completion of tree pruning activities started during the non-breeding/non-nesting season extends into the breeding/nesting season. If tree pruning or removal must occur during the breeding/nesting season, the Lessee's qualified biologist will conduct a monitoring program to begin fourteen (14) days prior to commencing activities that have a potential to disturb any nesting tree. During the 14-day monitoring period, the Lessee shall arrange to have its qualified biologist conduct weekly surveys to detect and record any protected birds in the area of operation and to identify any Active Nests within 300 feet (500 feet for raptors) of the trees proposed to be pruned or removed. Monitoring within the thirty (30) day advance monitoring period may include surveys conducted toward the end of the Non-breeding Season.

- 5.2.2 If during the breeding/nesting season it cannot be determined from the ground whether breeding activities have commenced, Lessee's qualified biologist will make a close-range observation of each nest to determine whether the nest is an active nest; that is, whether there are eggs in the nest and/or whether nest maintenance has taken place. Photographs of nests will be taken from above, as near to vertical as possible. Nests should be accessed by a cherry picker or a boom truck.
- 5.2.3 After inspecting all trees for active nests in the specific area scheduled for pruning or removal activities under Section 5.2.1, Lessee's qualified biologist shall identify those trees containing active nests with caution tape, flags, ribbons, or stakes. The Lessee shall instruct the contractor to avoid disturbing all marked trees during scheduled pruning activities.
- 5.2.4 Lessee's contractor should begin pruning or removal operations within three to four (3-4) days of receiving authorization from Department.
- 5.2.5 Pruning or removal activities within 300 feet of a tree with an active nest (500 feet in the case of an active raptor nest) must be performed with hand tools. If pruning activities cannot be accomplished with hand tools, the servicing of these trees must be postponed until the nest is vacated, juveniles have fledged, and there is no evidence of a second attempt at nesting.
- 5.2.6 In the event the Lessee's contractor discovers an active nest (eggs, nest construction or other evidence of breeding), not previously identified by Lessee's qualified biologist, the contractor shall immediately cease all pruning activities, and the Lessee shall immediately notify the Department. Thereafter, Lessee must consult with Lessee's qualified biologist to perform a re-inspection of the tree containing an active nest, determine that breeding and nesting has ceased and

obtain said biologist's approval to proceed if Lessee desires to continue tree pruning or removal activities.

- 5.2.7 All trimmings must be removed from the site at the end of the business day and disposed of at an appropriate location.
- 5.2.8 Special emphasis shall be placed on public safety during tree pruning or removal operations, particularly when the operation is adjacent to bike paths, parking stalls, sidewalks, driveways, or the promenade.
- 5.2.9 Removal of any tree shall require mitigation at a 1:1 ratio. Replacement trees shall consist of native or non-native, non-invasive tree species. The Department shall develop a tree replacement planting plan for all trees to be removed, which should include the location, tree type, tree size, planting specifications, and a monitoring program with specific performance standards. A tree replacement monitoring report shall be prepared and then updated annually for five years.

5.3 Health and Safety Issues & Emergencies

- 5.3.1 The Department shall determine if an immediate or imminent health and safety issue exists as described above. Lessees, with supporting documentation from a certified arborist, qualified biologist or public health official, shall notify the Department as soon as a health and safety issue is known. The Lessee shall be proactive in identifying and addressing injured, dying, or diseased trees and alerting the Department as early as possible during the Non-Breeding Season in order to avoid habitat disturbances during the nesting season.
- 5.3.2 Nesting or non-nesting trees posing an immediate or imminent health or safety issue should be pruned/removed immediately regardless of the presence of nest(s).
- 5.3.3 If the location or change in the condition of a tree located on any leasehold presents an immediate or imminent health and safety issue as described in the definitions above, Lessee shall submit a special permit application, as soon as possible, to the USFWS (see 3.4 above, Special Purpose Permits – U.S. Code of Federal Regulations, Title 50, § 21.27) and notify DCFG, and the Executive Director of the CCC, as soon as possible, while proceeding, as necessary, with tree removal or other remedies. When possible, the Lessee shall submit a special permit application and notify the Department and above agencies prior to tree removal or other remedies.
- 5.3.4 Lessee shall photograph and document the emergency occurrence, site conditions before and after the occurrence, and any observation of biological resources, and submit to Department a brief written report within fourteen (14)

business days. The Department shall create an incident file that shall be available for public agency inspection.

- 5.3.5 Steps shall be taken to ensure that tree pruning or removal will be the minimum necessary, as determined by an arborist or Lessee's qualified biologist, to address the health and safety issue while avoiding or minimizing impacts to nesting birds and their habitat. Steps taken shall include the use of non-mechanized, hand tools whenever the emergency occurs within 300 feet of a nesting tree.
- 5.3.6 All trimmings must be removed from the site at the end of the business day and disposed of at an appropriate location.
- 5.3.7 Removal of any tree shall require mitigation at a 1:1 ratio. Replacement trees shall consist of native or non-native, non-invasive tree species. Lessee is required to develop a tree replacement planting plan for all trees to be removed, which plan should include the location, tree type, tree size, and planting specifications and a monitoring program with specific performance standards. A tree replacement monitoring report shall be prepared and then updated annually for five years. The Lessee's annual monitoring report must be submitted to the Department prior to the start of each successive breeding/nesting season.

Management Policies for Crows and Other Omnivores

The following standards shall apply to the County and other land managers in Marina del Rey to help reduce predation pressure upon native wildlife populations from American Crows and other omnivores currently thriving in the local area:

- 1. Crows prefer to nest in trees, so discouraging tree-planting beyond requirements for tree replacement mitigation pursuant to policies 23 and 34 would help reduce numbers over time.
- 2. Crows are scavengers, especially of garbage cans, so restricting trash cans to the covered type and ensuring prompt servicing during periods of heaviest use (such as over weekends, especially during summer) would help to reduce numbers of crows, rats, and other scavengers.
- 3. Restaurants should be required to maintain covered, well-functioning dumpsters that discourage crows, rats, and other scavengers.
- 4. The County should consider similar measures on beaches adjacent to Marina del Rey (e.g., Venice and Dockweiler) as well as trash-reduction policies for Ballona Creek, where large numbers of crows congregate.